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UNCLAS PARIS 007031

SIPDIS

PASS SEC FOR SBOONE
PASS FEDERAL RESERVE
STATE FOR EB AND EUR/WE
TREASURY FOR DO/IM MSOBEL AND LHULL
TREASURY ALSO FOR DO/IMB AND DO/E WDINKELACKER
LABOR FOR ILAB
USDOC FOR 4212/MAC/EUR/OEURA

SENSITIVE

E.O. 12958: N/A

TAGS: [EFIN](#) [ECON](#) [PGOV](#) [FR](#)

SUBJECT: CNIL TALKS TO UNBLOCK SOX

SENSITIVE BUT UNCLASSIFIED, NOT FOR INTERNET

[11](#). (SBU) SUMMARY: We met with CNIL to discuss its opposition to listed companies' whistleblower provisions, as required by Sarbanes Oxley Section 301. CNIL says it has developed guiding principles to resolve the conflict of law, which it soon will share informally with interested parties. END SUMMARY.

BACKGROUND

[12](#). (U) The French National Commission on Information and Liberty (CNIL), a French agency set up to guard civil liberties, issued two decisions in May 2005 that prevent firms, listed in US markets but doing business in France, from complying with Sarbanes Oxley (SOX) Section 301. That section requires audit committees of publicly traded companies to establish procedures for confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters (e.g., whistleblower systems, or "hotlines"). We are aware that US Securities and Exchange Commission (SEC) staff members have been in direct contact with CNIL to find a solution.

[13](#). (SBU) A number of representatives of US-listed firms have contacted us to discuss the conundrum, how to go about designing a solution, and how to propose any solution without risking CNIL sanctions (which include both civil and criminal penalties). Issues identified include the extent of CNIL jurisdiction, other financial reporting obligations, good faith requirements, the practicality of anonymity issues in small offices or worksites, and labor law issues including union views. Companies represented in such discussions have included Coca-Cola, the Walt Disney Company, Johnson & Johnson, along with a number of other firms' local attorneys.

[14](#). (SBU) We met with Christophe Pallez, CNIL Secretary General, and with Clarisse Girot, head of international and European Affairs at CNIL, on October 13, to present local firms' concerns, express our interest in furthering corporate governance principles, and explore possible solutions to the firms' hesitation on presenting proposals. Pallez said the CNIL has received many inquiries about its decisions, and has been working with other French Ministries to determine the parameters of a possible compromise. CNIL has been preparing a draft document with guiding principles, which it will finish in the next few days. It will then consult with interested parties, informally by circulating the draft, before presenting the document to the Commissioners for their approval in a few weeks. The substance of the proposal is to carve out whistleblowing systems for strictly accounting and auditing matters, leaving other issues to be governed by current French law (which prevents anonymous accusations and transmission of data containing such accusations). Pallez promised to provide us the draft as well. He mentioned CNIL's participation in European Commission Article 29 Working Group, arguing that the French effort there is designed to harmonize 25 possibly different approaches to the data privacy issues presented by ethical hotlines. Girot stated she is preparing a working paper for presentation to the next meeting in November.

[15](#). (SBU) COMMENT: Once we get a copy of the CNIL draft, we will share it with the representatives of the firms who have contacted us, to see if it is both responsive and practicable. If that is the case, it could help lessen the impact of the French effort to block SOX throughout the EU. STAPLETON#